STANDARD FORM NO. 64

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Office Memorandum • UNITED STATES GOVERNMENT

This document consists of 2 pages
Number 1 of 7 copies, Series A.

TO : U/MSA - Mr. Hill

DATE: December 2, 1955

FROM : I/MSA - J. P. Furman JPF

SUBJECT: Use of Section 401 of the Mutual Security Act of 1954, as amended: Libyan Case.

The Mutual Security Act of 1954, as amended, establishes various requirements which must be met before military assistance can be furnished to any nation. In the normal case these requirements (and, in particular, the requirements of section 142(a) of the Act) are met by concluding a military assistance agreement with the potential recipient. No military assistance agreement has been concluded with Libya, and therefore Libya is not eligible to receive military assistance in the normal way.

However, section 401 of the Act authorizes the use of funds to provide limited amounts of assistance "without regard to the requirements of this Act," provided "the President determines that such use is important to the security of the United States." The function of making this determination has not been delegated by the President.

If the President were to determine that it is important to the security of the United States to provide military assistance to Libya even though Libya has not signed an agreement meeting the requirements of the Act, it would be legal to provide such assistance without requiring signature of the usual military assistance agreement (and without regard to other statutory requirements governing the procedures used in furnishing military assistance). Whether or not there should still be an abbreviated agreement with Libya covering the transaction (as recommended by Mr. Frechtling in his memorandum of November 16, 1955) and, if so, what that agreement should contain, would then become a question of policy.

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY J.M. Razi DATE May 6, 1982
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TO : U/MSA - Mr. Hill

DATE: November 16, 1955

FROM : U/MSA - L. E. Frechtling

SUBJECT: Legal Basis for Transfering Military Equipment to Libya.

As you know, Defense has concurred in Mr. Hoover's proposal to offer military equipment to Libya, in concert with the UK.

I understand that Defense is proposing that such U.S. equipment as is committed to Libya be transferred under some arrangement other than a Mutual Defense Assistance Agreement. Mr. Furman has confirmed by conversation with one of the OSD/ISA lawyers that Admiral Radford requested advice on possible bases for transfer other than an MDA Agreement. It appears that Admiral Radford is motivated by a desire to comply with State's request that military equipment be transferred to Libya as quickly as possible. One method suggested by OSD/ISA legal staff was to authorize the UK to transfer to Libya MDAP equipment previously furnished to the UK and now to excess to the UK's needs. This method would be less sound, and an obvious legal fiction if, as I understand, some equipment would under the British proposal be furnished direct from the U.S.

In any event, I question the advisability of transfering U.S. military equipment (scout cars and 105 mm. guns are mentioned) to Libya without the usual safeguards as to use for aggressive purposes (the Palestine conflict), transfer to third countries (Egypt, Jordan et cetera).

When Israeli sympathizers in the US attacked the extension of grant military assistance to Iraq as putting Israel in peril, one of the most effective rebuttals by the Administration was reference to passages in our MDA Agreement with Iraq in which the latter engaged to use the arms only for legitimate self-defense.

Over the past year, there have been proposals for giving arms to Egypt without the usual conditions, but the Secretary did not approve. His telegrams and statements from Geneva do not suggest that he had changed his attitude on this question.

A short MDA agreement tailored to the Libyan situation but containing the essential legal and administrative conditions could be drafted and negotiated readily, if the Libyans find the UK-US offer acceptable.

I suggest

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I suggest that NEA's opinion be solicited and that, if agreement is reached along the above lines, that Defense be notified. As far as I can learn, no specific action has yet been taken by Defense in presumptive implementation of Mr. Hoover's letter.

cc: U/MSA - Mr. Horn
L/MSA - Mr. Furman

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INCOMING TELEGRAM

Department of State

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Action
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Control: 8432
Rec'd: November 16, 1955
5:42 a.m.

FROM: Tripoli

TO: Secretary of State

NO: 211, November 16, 10 a.m.

NIACT

Embassy astonished by instructions contained NIACT Department telegram 172 received 0430 today since from series British instructions quite clear gift armoured car squadron was to be presented Libyans as joint UK-US undertaking. Likewise implicit NIACT Department telegram 168 and from talks with Stevens that while Ben Halim could not as yet be informed possibility item 2, he would, of course, be apprised US participation item 1. In fact, were such participation kept from him extremely doubtful whether he would have considered offer acceptable. Also essential for him give immediate publicity forestall Egyptian maneuver.

In any event Ambassador Graham and I followed our instructions as we had them and immediately following our meeting with Prime Minister last evening (Embassy telegram 210) latter called press conference resulting in frontpage article reported separately.

As Department will appreciate tactics of our approach and subsequent publicity have effectively smothered Egyptian arms offer which in our opinion may constitute most favorable turning point in US-UK relations with Libya vis-a-vis Egypt and potential Soviet penetration.

NES

MAM

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